

The enterprise zone building materials exemption allows retailers located in the municipality or unincorporated area of a county that established an enterprise zone to make tax-free sales of building materials that will be incorporated into real estate located in the enterprise zone. See 86 Ill. Adm. Code 130.1951 (This is a PLR).

June 29, 2000

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of June 7, 2000. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY and the BUSINESS for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither the COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

This letter is written on behalf of The COMPANY and BUSINESS as a request for private letter ruling under Title 2 Part 1200 Section 1200.110 of the Illinois Department of Revenue regulations. This request is being made under a power of attorney from BUSINESS, a copy of which is enclosed.

The request involves issues related to the Retailers' Occupation Tax and related taxes, specifically as they relate to the Illinois enterprise zones.

The COMPANY, a Pennsylvania-based Subchapter S Corporation, has been engaged to construct a large distribution facility in a CITY Enterprise Zone. The COMPANY has created a subsidiary, BUSINESS, an Illinois limited liability company that will be headquartered in a trailer at the CITY Enterprise Zone job site. BUSINESS will be a supplier of construction materials for the indicated project.

BUSINESS will register for the collection and payment of the Illinois Retailers' Occupation Tax and any other applicable taxes. BUSINESS is aware that items not incorporated into the structure, such as tools, fuel and other items remain subject to Illinois sales tax.

BUSINESS will maintain its own bank accounts, books and records. All records (purchase orders, sales invoices, etc.) will be maintained on a computerized system completely separate from those of the The COMPANY. All items purchased will be resold to subcontractors at cost. BUSINESS will utilize outside consultants for management of operational activities. Administrative costs will be recovered by billing the warehouse owner as well as The COMPANY.

BUSINESS plans to adopt the following procedures:

1. Contractors will issue BUSINESS a purchase order on all purchases of building materials along with a Purchaser's Statement executed by the contractor declaring that the materials will be incorporated into real estate in the enterprise zone.
2. Upon receipt of the purchase order, BUSINESS will prepare a separate purchase order, which will be sent to the supplier along with a properly executed resale certificate.
3. Once an invoice is received from the supplier, BUSINESS will issue a check from their bank account and invoice the contractor for the same amount.
4. Prior to issuance, all purchase orders and checks submitted by BUSINESS to other suppliers require approval by representatives of The COMPANY.

Additionally, improvements will be made to a parking lot adjacent to the warehouse. Materials used in these improvements include, but are not limited to, steel, concrete, switchgear, asphalt, as well as parking lot lighting (poles, lights, etc.).

We are requesting a ruling on the following questions. First, does the described methodology for the forming and operations of BUSINESS conform to the Department's regulations found at 86 Ill. Adm. Code, Chapter 1, Section 130.1951? Second, do the parking lot improvements, based on the above description, qualify for sales tax exemption under those same regulations?

To the best of my knowledge, as well as that of the taxpayer, the Illinois Department of Revenue has never issued or been requested to issue a ruling on this matter by BUSINESS, The COMPANY or any of its affiliates.

Enclosed is a copy of 86 Ill. Adm. Code 130.1951 concerning Enterprise Zones. The enterprise zone building materials exemption allows retailers located in the municipality or unincorporated area of a county that established an enterprise zone to make tax-free sales of building materials that will be incorporated into real estate located in the enterprise zone.

In order for businesses to qualify for the exemption as retailers, they must comply with the following requirements:

- 1) Retailers must have an identifiable physical presence in the municipality or the county that has established the enterprise zone;
- 2) Retailers must register with the Department at a location in the municipality or in the unincorporated area of the county that has established the enterprise zone;
- 3) Retailers must be able to document the acceptance of purchase orders at the location in the municipality or the county that has established the enterprise zone.

In order for the enterprise zone building materials exemption to be claimed, it must be shown that qualifying building materials were purchased from retailers located in the jurisdiction that created the enterprise zone into which the building materials will be incorporated. It is critical that a clear paperwork trail exists showing that buyers purchased the materials from qualified retailers. The following two separate transactions must exist:

- 1) Sales from suppliers to retailers located in the jurisdiction that created the enterprise zone (exempt as sales for resale);
- 2) Sales from retailers located in the jurisdiction that created the enterprise zone to buyers (exempt by reason of the enterprise zone building materials exemption.)

Each of these transactions must exist independent of the other and the exemption applicable to each transaction must be documented. We urge you not to be cavalier in structuring these transactions. The following documentation establishes the two transactions and the available exemptions:

- 1) Sales from suppliers to retailers:
 - a. Purchase orders from the retailers to the suppliers;
 - b. Certificates of Resale from retailers to the suppliers (see the enclosed copy of 86 Ill. Adm. Code 130.1405 which describes the requirements for Certificates of Resale);
 - c. Invoices from the suppliers to the retailers;
 - d. Payments to the suppliers from the retailers.
- 2) Sales from retailers to the purchasers:
 - a. Purchase orders from purchasers to the retailers;

- b. Enterprise zone building materials certifications from purchasers to retailers containing all of the information set forth at 86 Ill. Adm. Code 130.1951(a)(3);
- c. Invoices from retailers to purchasers;
- d. Payments to the retailers from the purchasers.

Under the scenario you set out in your letter, the retailer will have an identifiable physical presence in the municipality or the county that has established the enterprise zone. You have also stated that the retailer will register for payment of Retailers' Occupation Tax and be able to document the acceptance of purchase orders at the location in the municipality or the county that has established the enterprise zone. Please be advised the Department requires that the retailer be a separate legal entity when it registers for the purpose of being an enterprise zone retailer. You advised in our clarifying telephone conversation that this is the case with BUSINESS.

Your letter indicated that a paperwork trail would exist showing that suppliers sold the materials to qualified retailers who then resold them to the contractors. Your letter also stated that the retailer will issue resale certificates to the material supplier and that the material supplier will invoice the retailer. The retailer will, in turn, invoice the construction contractor who will pay the invoice to the retailer. The retailer will pay the material supplier. Sales of building materials made pursuant to the procedures set forth in your letter will qualify for the building materials exemption.

Regarding the parking lot improvements, we understand from our conversation that the steel, concrete, asphalt and light poles will be permanently affixed to real estate in this job. They would thus qualify for the exemption so long as the above described procedures are followed. It is important to keep in mind, as discussed in our recent telephone conversation, that for the asphalt to be eligible for exemption it must be purchased by a retailer in the jurisdiction that created the enterprise zone and then resold to the contractor who will incorporate it into the real estate. An asphalt plant that is also installing the asphalt cannot claim the enterprise zone exemption unless it purchases the material from a retailer in the jurisdiction that created the zone. You stated that the retailer BUSINESS would purchase the asphalt and then resell it to the contractor. As such, it will qualify for the exemption. The switchgear will also qualify, as it will be part of the electrical power system for the light poles. However, the light bulbs and any other items that remain tangible personal property would not be eligible for the exemption.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

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I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Karl Betz
Associate Counsel

KB:msk

Enc.